

44. The system of claim 43 wherein the login process determines that the participant is pre-approved to access the wholesale-tier if the participant enters a predetermined login ID or password or both.

45. The system of claim 36 wherein the electronic transactional system comprises an electronic catalog system.

46. The system of claim 36 wherein the electronic transactional system comprises an electronic auction system.

47. The system of claim 36 wherein the electronic transactional system comprises an electronic marketplace.

48. The system of claim 36 wherein the electronic transactional system comprises an electronic store.

49. The system of claim 36 wherein the electronic transactional system comprises an electronic vendor system.

50. The system of claim 36 wherein the electronic transactional system supports one or more of 'sell at' offers, 'buy at' offers, and counter-offers.--

Remarks

In view of the foregoing amendments and the following remarks, consideration and allowance of this application are requested.

Claims 11-50 are presented for consideration with claims 11, 27 and 36 being independent.

Applicant acknowledges with appreciation that all claims directed to “invention #2” were allowed in the parent application (Ser. No. 09/253,057). Claims 11-50 are presented in this divisional application to pursue coverage on “invention #1.”

For the reasons set forth at pages 3-14 of the final office action mailed in the parent application, claims 46-79 of the parent application were rejected under 35 USC 103(a) as being unpatentable over Nahan (USP 5,664,111) and various assertions of official notice. These rejections and assertions, and their underlying rationale, are traversed in their entirety. Moreover, claims 11-50 are allowable for the following reasons.

As presented herein, independent claim 11 is directed to a computer-implemented electronic transactional system having a data repository, a first tier and a second tier. The data repository stores information corresponding to an inventory of one or more available items. The first tier provides a first participant access to the inventory of one or more items in the data repository. The inventory is offered to the first participant under a first pricing scheme. The second tier provides a second participant, different from the first participant, access to the inventory of one or more items in the data repository. The inventory is offered to the second participant under a second pricing scheme different from the first pricing scheme. The art of record fails to disclose or suggest the combination of elements recited in independent claim 11.

Nahan relates to a multimedia presentational and marketing system in which an art dealer (“the showing dealer”) can show his customers images of another art dealer’s inventory (i.e., “the listing dealer”). As disclosed in Nahan in Figs. 21-22 and at column 13, lines 3-28, Nahan’s presentational system includes a color-coding scheme that can assist the showing dealer in setting a price in a way that helps prevent a customer from determining the mark up. More specifically, when a showing dealer clicks the “Price” button in Nahan’s system a price difference ratio is calculated between the listing dealer’s suggested retail price and a wholesale price previously paid by the listing dealer. The calculated price difference ratio represents an amount of discount from the listing dealer’s suggested retail price.

However, Nahan fails to disclose or suggest an electronic transactional system as recited in claim 11 in which inventory can be offered for sale to participants under different pricing schemes. To the contrary, Nahan's system is directed to presenting inventory only to a single tier of potential buyers – namely, to retail consumers. Nahan does not disclose or suggest offering inventory under two different pricing schemes. Rather, Nahan's system uses wholesale price history to assist the showing dealer in determining the amount of discount that can be offered to a potential buyer. This is far different from offering inventory to different participants at different pricing schemes (e.g., retail and wholesale) as recited in claim 11. Accordingly, claim 11 is allowable over Nahan for at least this reason.

At page 4 of the office action, the Examiner concedes that neither Nahan, nor any of the art of record, suggests or discloses offering inventory to participants under different pricing schemes. To compensate for this shortcoming in the claim rejection, the Examiner improperly relies on an erroneous assertion of "official notice" as the principal evidence for rejecting the claims. Applicant submits that the Examiner's assertions of official notice appearing at page 4 – and elsewhere throughout the office action (e.g., pp. 6, 8, 10, and 12) – are unsupported and improper. As explained in MPEP 2144.03, official notice can properly be used only to establish facts that capable of "instant and unquestionable demonstration as being well-known." In re Ahlert, 424 F.2d 1088, 1091 (CCPA 1970). Moreover, official notice may be used only to "fill the gaps" and cannot be used as "the principal evidence upon which a rejection is based," Ahlert, 424 F.2d at 1088, or as the motivation for combining or modifying references. Ex Parte Grochowski, No. 95-1343, slip op. at 5 (Bd. Pat. App. & Int. June 27, 1995). Applicant hereby challenges the Examiner's assertions of official notice and other various assertions of fact appearing throughout the office action, and submits that they must be retracted or supported by citation to appropriate prior art references.

Accordingly, applicant vigorously disputes that the alleged "automobile dealership" system postulated by the Examiner exists in the prior art and/or that it has the features alleged by the Examiner. Moreover, not only is the Examiner's alleged "automobile dealership" example a

misuse of official notice, it also fails to suggest offering inventory to two or more different participants under differing pricing schemes. To the contrary, as the Examiner clearly admits, the hypothetical “automobile dealership” system imagined by the Examiner supports only a single tier of participants – namely, dealers. (See, e.g., Office Action at page 4, lines 10-12: “When a dealer (the second participant) wants a vehicle that he currently does not have in stock, he has the option of searching other affiliated dealerships for the desired vehicle....”). Consequently, because the Examiner’s own characterization of the alleged “automobile dealership” system supports only a single tier of participants, the alleged system necessarily fails to suggest an electronic transactional system as recited by claim 11 in which inventory is offered to first and second tier participants under different pricing schemes. Accordingly, the rejection of claim 11 is improper for this additional reason.

Independent claim 27 is directed to a computer-implemented method of facilitating commercial transactions. The method includes maintaining a first transactional tier comprising items offered to consumer participants under a retail pricing scheme, maintaining a second transactional tier comprising items offered to dealer participants under a wholesale pricing scheme, and linking the first transactional tier and the second transactional tier through a data repository having data records that represent items concurrently available in both the first transactional tier and the second transactional tier electronic. The art of record fails to disclose or suggest a computer-implemented method as recited in claim 27 in which first and second transactional tiers are maintained that offer items, respectively, to dealer participants under a wholesale pricing scheme and to consumer participants under a retail pricing scheme. Accordingly, independent claim 27 is allowable at least for this reason.

Independent claim 36 is directed to an electronic transactional system for facilitating electronic commerce transactions among participants using a data packet network. The system includes a first data storage location for storing information relating to an item for sale. The stored information indicates at least one of a retail price term for a retail-tier participant and a wholesale price term for a wholesale-tier participant. The system also includes a second data

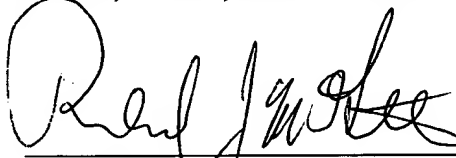
storage location for storing a user identification identifying a participant either as a retail-tier participant or as a wholesale-tier participant, and a display process for selectively displaying, depending on the user identification stored in the second data storage location, at least one of the retail price term to retail-tier participants and the wholesale price term to wholesale-tier participants. The art of record fails to disclose or suggest an electronic transactional system as recited in claim 36 in which a display process selectively displays, depending on a stored user identification, at least one of the retail price term to retail-tier participants and the wholesale price term to wholesale-tier participants. Accordingly, independent claim 36 is allowable at least for this reason.

The remaining claims – 12-26, 28-35 and 37-50 – depend directly or indirectly from one of the independent claims discussed above. Accordingly, dependent claims 12-26, 28-35 and 37-50 are allowable at least for the same reasons that their respective independent claims are allowable and for reciting allowable subject matter in their own right. Independent consideration and allowance of the dependent claims are requested.

In view of the foregoing amendments and remarks, this application is in condition for allowance, and a notice thereof is requested.

Respectfully submitted,

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